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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,527	03/29/2004	Fred Naval Desai	8768MD2	1921
27752	7590	04/07/2006	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,527

Applicant(s)

DESAI ET AL.

Examiner

Melanie J. Hand

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/29/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for priority as a divisional of copending Application No. 10/288,095, filed on November 5, 2002.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on March 29, 2004 was filed on the mailing date of the Application. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1, 5-10, 15-17 and 23-27 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 5-18 of copending Application No. 11/280,627. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

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Claims 1 and 5-21 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 5-21 of copending Application No. 10/811,671. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5-15, 17, and 23-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Odorzynski et al (U.S. Patent No. 6,245,050).

With respect to **Claims 1,5-7,10,11**: Odorzynski teaches diaper 10 comprising backsheet 12, topsheet 14 and absorbent core 16. Elastomeric hot melt adhesive is applied to at least any one of the components of diaper 10, e.g. backsheet 12. The adhesive is applied via slot coating and therefore forms a continuous geometric pattern of rectilinear or curvilinear stripes on the diaper component substrate with a predetermined spacing between stripes. Since the backsheet 12 is a nonwoven thermoplastic film and the adhesive is a hot melt adhesive, Examiner asserts that the adhesive is capable of being applied to the substrate in such a manner as to be partially penetrate said substrate.

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With respect to **Claims 8,9**: Odorzynski teaches an elasticized area width of 1.27-7.62 mm and a thickness of 2.54 –25.4 mm. (Col. 6, lines 52-58)

With respect to **Claim 12**: Since Odorzynski teaches slot coating, the spacing between stripes can be predetermined so as to be nonuniform.

With respect to **Claims 13,14**: Odorzynski teaches strands or ribbons of the adhesive film that are applied to define an elasticized area, therefore the strands must overlap to form boundaries and a continuous elasticized area within the boundaries. (Col. 6, lines 21-27)

With respect to **Claim 15**: Odorzynski teaches waist elastics 38, leg cuffs 36 and fastening tabs 40 manufactured from the same adhesive film composition, therefore a component of diaper 10 having the elastic composition therein has an additional elastic material that is capable of being manufactured from an alternate suitable elastomeric adhesive.

With respect to **Claim 17**: Odorzynski teaches applying the elastic adhesive composition to at least one component of diaper 20. (Col 5, lines 49-51)

With respect to **Claims 23,24**: Odorzynski teaches that backsheet 12 is comprised of a nonwoven polyethylene web. (Col. 2, lines 35-38)

With respect to **Claim 25**: Odorzynski teaches that the component of the diaper containing the adhesive is necked. (Col. 6, lines 1-7)

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With respect to **Claims 26,27**: Odorzynski teaches the elastic adhesive in film form sandwiched between the topsheet and backsheet to form an elasticized area. (Col. 5, lines 63-67)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 16 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odorzynski ('050).

With respect to **Claim 16**: Odorzynski teaches selecting the viscosity of the adhesives that can involve mixing adhesives as well as heating them. Odorzynski does not explicitly teach two different adhesives, however Odorzynski does teach applying the adhesives either by spray coating or film forming (Col. 6, lines 13-20) which would allow the application of different elastic adhesive compositions to one substrate. Examiner asserts therefore that it would be obvious to

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modify the adhesive area taught by Odorzynski so as to be comprised of two different adhesive compositions applied in two different patterns.

With respect to **Claims 18,19,20,22**: Odorzynski does not explicitly teach different elastic adhesives disposed on different components of diaper 10. However, since Odorzynski teaches various application methods for the elastic adhesive composition, various suitable materials for the composition itself, and teaches applying an adhesive to at least one component of diaper 10 (e.g. fastening tabs 40 to topsheet 14), it would be obvious to one of ordinary skill in the art to apply different adhesives in different patterns to different components of diaper 10, said differing adhesives exhibiting different elastic properties.

With respect to **Claim 21**: Fastening tabs 40 comprising an elastic adhesive form a right angle with topsheet 14 containing an elastic adhesive. (Fig. 1)

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odorzynski ('050) in view of Himes (U.S. Patent No. 5,304,599).

With respect to **Claims 2-4**: Odorzynski does not teach a percent set for the elastomeric adhesive. Himes teaches an extrudable elastomeric composition including an elastomeric polymer and a tackifying resin having a percent set of 9%. ('599, Table 4). Himes teaches that this composition is suitable for extrusion onto an elastic sheet, therefore it would be obvious to substitute the composition taught by Himes for the adhesive composition as taught by Odorzynski so as to have a backsheet with the adhesive composition therein having a percent set of 9%.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
PRIMARY EXAMINER

